

August 14, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPEAL OF NOTICE AND ORDER

SUBJECT: Department of Development and Environmental Services File No. **E9801364**

NIRAV PARINAMA
Code Enforcement Appeal

Location
of Violation: 23301 Northeast Redmond-Fall City Road, Redmond, Washington

Appellant: Rev. Nirav Parinama, *represented by*
Robert Jackson, Attorney at Law
2100 – 116th Avenue NE
Bellevue, WA 98004
Telephone: (425) 451-1400 Facsimile: (425) 451-1689

King County: Department of Development and Environmental Services
Code Enforcement Section, *represented by*
Jeri Breazeal
900 Oakesdale Avenue Southwest
Renton, WA 98053
Telephone: (206) 296-7264 Facsimile: (206) 296-6604

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant the appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	July 18, 2000
Hearing Closed:	August 4, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Burden of proof
- Sufficiency of evidence
- Habitation

SUMMARY:

DDES having failed to meet its burden of proof to demonstrate unlawful habitation of the property, the appeal is granted.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On November 29, 1999 a notice and order was issued by the King County Department of Development and Environmental Services to the Longhouse Trust at 23301 NE Redmond-Fall City Road citing the property for the illegal occupancy of sub-standard dwellings. A timely appeal of the notice and order was filed by the Reverend Nirav Parinama.
2. A pre-hearing order was issued in this proceeding by the King County Hearing Examiner's Office on March 14, 2000. The order defined the issues on appeal to be whether the Appellant had violated the County Zoning Code by engaging in the temporary and short term housing of persons in tents, mobile homes, trailers or similar shelters without a conditional use permit; whether the Appellant's religious use of the property constitutes a defense to the notice and order; and whether a compliance certificate issued by DDES on March 12, 1996 had the effect of approving the current use of the Appellant's property. In addition, the pre-hearing order placed a burden of proof on DDES to establish that the Appellant's property is being used for temporary housing in violation of the Zoning Code, with the Appellant having the burden of proof to demonstrate that the current use of the property was previously approved by DDES in 1996.
3. Most of the testimony at the public hearing held on July 18, 2000 focused on a set of photographs taken by Code Enforcement Officer Jeri Breazeal on February 9, 1999 (Exhibit No. 11), as identified within a rough sketch of the property submitted as Exhibit No. 9. At issue was the alleged residential use of four older cabins plus a recreational vehicle. While Ms. Breazeal's strongest testimony concerned the recreational vehicle, which at the time of her initial site visit was observed to have been occupied by individuals eating a meal, the uncontroverted testimony of Reverend Parinama was that this RV has been removed from the property. With respect to the RV, therefore, any illegal occupancy has been terminated, and the Appellant is in compliance with the notice and order.

4. The four older cabins on the property appear to have been originally constructed for use as small residential dwellings. These cabins were among structures previously cited for illegal occupancy within a June 5, 1995 notice and order issued by DDES under File No. E90C0380. Based on site inspections dating back to April, 1993, Code Enforcement Officer Lamar Reed testified to direct observations of residential occupancy within cabins 3, 8 and 10 as identified in Exhibit No. 9. However, with the issuance of a notice of satisfaction and the closing of the prior enforcement file, DDES concluded that these prior unlawful residential occupancies had been corrected some time in 1996. While the issuance of a notice of compliance in 1996 does not preclude the possibility that unlawful residential occupancies were later revived, the compliance notice does have the effect of negating any inference of present residential use based simply on the structural character of these older cabins.
5. Ms. Breazeal's belief that the four cabins under review have been unlawfully used for habitation since 1996 is based primarily on her February 9, 1999 site visit and the accompanying photographs. In no instance did she directly observe human habitation of the structures, but in each case she saw what she regarded to be the incidental trappings of human habitation. For cabin no. 3, these included the presence of plants, curtains and outdoor lawn furniture; for cabin no. 8, curtains, a stained glass window hanging and a bicycle; for cabin no. 9, wind chimes and empty beer cases; and for cabin no. 10, a broom or a mop on the porch and a parked car nearby.

The Department's brief also refers to admissions by Reverend Parinama of habitational use, but the record of the pre-hearing conference where such admissions are alleged to have occurred was never offered into evidence. It, therefore, lies outside the scope of our review.
6. The testimony of Reverend Parinama regarding these four cabins was that they were primarily employed for storage but also were used occasionally as places for meditation and prayer. It is uncontested that the 15-acre Longhouse Trust property is frequently the site of small religious gatherings and that some of the small outbuildings are used in association with these religious activities. Reverend Parinama's testimony regarding the use of the cabins for meditation and prayer is an explanation consistent with Ms. Breazeal's observations, particularly with respect to decorative touches such as plants, stained glass hangings and wind chimes.

CONCLUSIONS:

1. DDES's position appears to be that any use of the older cabins for purposes other than storage constitutes a violation of the Zoning Code and requires affirmation of the notice and order. We disagree with this interpretation. First of all, the pre-hearing order refines the generic term "illegal occupancy" to mean for purposes of this appeal the housing or habitation of persons within the cited structures. Thus, the use of the structures for non-storage uses such as meditation and prayer does not automatically establish the fact of unlawful habitation. The observations of Ms. Breazeal and her supporting photographs are as probative of the meditational use testified to by Reverend Parinama as the habitation use alleged by DDES. In the absence of unequivocal evidence that some individual is or has been living in one or another of the cabins, we conclude that DDES has failed to sustain its burden of proof that these structures are being used for purposes of habitation. Moreover, while we see no need to rule directly upon the religious defense raised by the Appellant, the uncontroverted testimony that a Constitutionally protected religious activity occurs on the property at least requires that a conclusion in

of this activity be supported by clear and convincing evidence. Such a demonstration has not been made in this case.

2. Our decision is focused strictly on the terms of the notice and order issued on November 29, 1999, which was based on an allegation of the illegal residential habitation and occupancy of outbuildings on the property. It is clear from the layout of the property, its dispersed development pattern, the kinds of structures, and the religious interests of Reverend Parinama that the property is capable of supporting uses of a type where a conditional use permit may be required either for a church or for a conference center. Under the Zoning Code, the point at which private religious observances become sufficiently frequent and intense as to become matters of public concern to be regulated through the discretionary permitting process is unclear at best. DDES will need to make its own assessment at what level of activity this line has been crossed, but in view of the Constitutional protections involved, it seems unlikely that regulatory interests can be legitimately invoked unless the activities on the property are causing adverse off-site impacts or onsite health and safety concerns.

DECISION:

The appeal of the Reverend Nirav Parinama is GRANTED.

ORDERED this 14th day of August, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED by first class and certified mail to:

Nirav Parinama
23301 NE Redmond-Fall City Rd.
Redmond, WA 98053

TRANSMITTED this 14th day of August, 2000, to the following parties and interested persons:

C.U.R.E.
23301 Redmond-Fall City Road
Redmond WA 98053

Robert B. Jackson
Attorney at Law
2100 - 116th Ave NE
Bellevue WA 98004

Nirav Parinama
23301 NE Redmond-Fall City Rd
Redmond WA 98053

Jeri Breazeal
DDES/Building Services Div
Code Enforcement Section
MS OAK-DE-0100

Elizabeth Deraitus
DDES/BSD
Code Enforcement Section
MS OAK-DE-0100

Lamar Reed
DDES/BSD
Code Enforcement Section
MS-OAK-DE-0100

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 18, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9801364 – NIRAV PARINAMA:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Jeri Breazeal and Lamar Reed. Participating in the hearing and representing the Appellant were Nirav Parinama and Bob Jackson. There were no other participants in this hearing.

The following exhibits were offered and entered into the record:

- | | |
|-----------------|---|
| Exhibit No. 1 | Staff Report to the Hearing Examiner, dated July 18, 2000 |
| Exhibit No. 2 | Copy of Notice & Order, issued November 29, 2000 |
| Exhibit No. 3 | Copy of Appeal received December 20, 1999 |
| Exhibit No. 4 | Copy of letter sent to Longhouse Trust, dated February 16, 1999 |
| Exhibit No. 5 | Copy of previous Notice & Order, issued under File No. E90C0380 |
| Exhibit No. 6 | Copy of Pre-Hearing Order, dated March 14, 2000 |
| Exhibit No. 7a. | Letter to Nirav Parinama from Jeri Breazeal, dated March 29, 2000 |
| Exhibit No. 7b. | Letter to Nirav Parinama from Jeri Breazeal, dated April 25, 2000 |
| Exhibit No. 8 | Copies of applicable codes |
| Exhibit No. 9 | Copies of pictures with sketch of where they were taken |
| Exhibit No. 10 | Copy of aerial photo taken in 1996 |
| Exhibit No. 11 | Three pages of color photos, taken February 9, 1999 |

SLS:sje

Code enf/E9801364 RPT